

Message Text

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ACTION L-03

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C O N F I D E N T I A L SECTION 01 OF 02 GENEVA 04263

E.O. 11652: N/A
TAGS: TSPA, UN
SUBJECT: OUTER SPACE LEGAL - TREATY ON THE MOON

REF: GENEVA 04177

1. SUMMARY. THIS TEL CONTAINS TEXT OF A COMMENTARY ON A HELPFUL INFORMAL AUSTRIAN PROPOSAL, WHICH TRIES TO RESOLVE LONG-STANDING DIFFERENCES ON PROVISIONS OF THE TREATY ON THE MOON RELATING TO POSSIBLE FUTURE EXPLOITATION OF LUNAR NATURAL RESOURCES. END SUMMARY.

2. IN LIGHT OF DISCUSSIONS IN PLENARY AND MOON TREATY WORKING GROUP SESSIONS, AUSTRIAN FONMIN DEPUTY LEGAL ADVISER TUERCK UNDERTOOK OVER THE WEEKEND A COMPLETE REDRAFT OF AN ARTICLE (TEXT AT END THIS TEL) ON POSSIBLE EXPLOITATION OF LUNAR NATURAL RESOURCES. TUERCK HAS GIVEN HIS DRAFT TO USSR, UK, FRG, POLAND, INDIA AND BRAZIL AND WILL BE HOLDING INFORMAL CONSULTATIONS AFTERNOON 21 MARCH.

3. THE AUSTRIAN DRAFT INCORPORATES THE BASIC IDEA PROPOSED BY THE US IN 1972 AND NOW PRESSED BY LDC'S THAT THE NATURAL RESOURCES OF THE MOON SHALL BE CONSIDERED THE COMMON HERITAGE OF MANKIND (PARA. 2). IT ADDS IN THE SAME PARAGRAPH, IN RESPONSE TO THE APPARENTLY LIMITING PHRASE "FOR THE PURPOSES OF THIS TREATY" AND STATES THAT "THIS PRINCIPLE FINDS ITS EXPRESSIONS IN THE FOLLOWING PROVISIONS OF THIS ARTICLE", THEREBY SEEKING TO QUIET ASSERTED SOVIET DESIRE TO INSULATE TO THE EXTENT PRACTICABLE THE COMMON HERITAGE PRINCIPLE IN THE MOON TREATY CONTEXT (A)

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MON HERITAGE OF MANKIND (PARA. 2). IT ADDS IN THE SAME PARAGRAPH, IN RESPONSE TO THE APPARENTLY LIMITING PHRASE "FOR THE PURPOSES OF THIS TREATY" AND STATES THAT "THIS PRINCIPLE FINDS ITS EXPRESSIONS IN THE FOLLOWING PROVISIONS OF THIS ARTICLE", THEREBY SEEKING TO QUIET ASSERTED SOVIET DESIRE TO INSULATE TO THE EXTENT PRACTICABLE THE COMMON HERITAGE PRINCIPLE IN THE MOON TREATY CONTEXT (A)

FROM DEVELOPMENTS ELSEWHERE, EG DEEP SEABEDS, AND (B) FROM BEING READ BACK INTO THE 1967 OUTER SPACE TREATY. AUSTRIAN TEXT INCORPORATES LONG-STANDING US TEXT CALLING FOR PARTIES TO THE MOON TREATY TO "UNDERTAKE TO ESTABLISH AN INTERNATIONAL REGIME...TO GOVERN THE EXPLOITATION OF THE NATURAL RESOURCES OF THE MOON WHEN SUCH EXPLOITATION BECOMES FEASIBLE." (PARA. 5). IT LAYS DOWN "THE MAIN PURPOSES" OF THE FUTURE REGIME PROPOSED BY THE US AND INDIA IN 1973, NAMELY ORDERLY AND SAFE DEVELOPMENT, RATIONAL MANAGEMENT, EXPANSION OF OPPORTUNITIES, AND EQUITABLE SHARING BY ALL MOON TREATY PARTIES WHILE ADDING THE CAUTIONARY BALANCED NOTE THAT SPECIAL CONSIDERATION IS TO BE GIVEN THE INTERESTS AND NEEDS OF THE LDC'S "AS WELL AS THE EFFORTS OF THOSE COUNTRIES WHICH HAVE CONTRIBUTED TO THE EXPLORATIONS OF THE MOON" (PARA. 7). THE TEXT ALSO INCLUDES A PROVISION WE HAVE LONG SOUGHT BY US WHOSE PURPOSE IS TO COUNTER ANY POSSIBLE ASSERTION THAT, PENDING AGREEMENT AND ENTRY INTO FORCE OF THE FUTURE REGIME, A MORATORIUM EXISTS WITH RESPECT TO EXPLOITATION (PARA.8).

4. AUSTRIAN TEXT IS DRAFTED IN TERMS OF THE MOON AND ITS NATURAL RESOURCES. HOWEVER, AN ACCOMPANYING FOOTNOTE, WHICH WE HAVE NOT TRANSMITTED IN INTEREST OF CLARITY, STATES CLEAR THAT THE SCOPE OF THE TREATY IS TO BE SEPARATELY RESOLVED. IN THIS CONNECTION IT WILL BE RECALLED THAT USSR HAS EARLIER BVYED TO WIDEN CONFIDENTIAL

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SCOPE OF THE TREATY TO INCLUDE THE MOON AND OTHER CELESTIAL BODIES WITHIN THE SOLAR SYSTEM PROVIDED THAT OTHER OUTSTANDING ISSUES ARE RESOLVED.

5. AUSTRIAN TEXT CONTAINS AN ERROR IN FINAL SENTENCE OF PARA 3 WHERE THERE IS A REFERENCE TO "PARAGRAPH 4", WHICH SHOULD BE CHANGED TO READ "PARAGRAPH 5". ALSO, TERMINAL PHRASE IN PARA 8", OF THE INTERNATIONAL REGIME TO BE ESTABLISHED" IS CONFUSING AND COULD, CONCEIVABLY, BE TAKEN AS CONTAINING AN INFERENCE THAT MOON TREATY PARTIES HAVE SOME KIND OF OBLIGATION TO RATIFY THE RESOURCES REGIME TREATY WHEN ONCE THAT IS NEGOTIATED REGARDLESS OF THE ACCEPTABILITY OF THE REGIME TREATY. WE WILL PROPOSE DELETION OF THIS PHRASE.

6. SUBJECT TO THESE TWO CHANGES, THE PROPOSAL BY AUSTRIA IS FULLY WITHIN EXISTING INSTRUCTIONS AND INDEED CARRIES FORWARD LONG-STANDING AND FUNDAMENTAL US IDEAS AS TO WHAT MAY REASONABLY BE NEGOTIATED AT THIS STAGE BY WAY OF TREATY EXPECTATIONS, RIGHTS AND DUTIES AND WHAT SHOULD BE LEFT TO THE FUTURE. WE WILL SO INDICATE, DURING CONSULTATIONS FORESEEN PARA 2 OF THIS MESSAGE.

7. AUSTRIAN TEXT READS

BEGIN QUOTE ARTICLE X

1. THE MOON AND ITS NATURAL RESOURCES SHALL BE CONSIDERED THE COMMON HERITAGE OF MANKIND FOR THE PURPOSES OF THIS TREATY. THIS PRINCIPLE FINDS ITS EXPRESSION IN THE FOLLOWING PROVISIONS OF THIS ARTICLE.
2. THE MOON IS NOT SUBJECT TO NATIONAL APPROPRIATION BY ANY CLAIM OF SOVEREIGNTY, BY MEANS OF USE OR OCCUPATION, OR BY ANY OTHER MEANS.
3. NEITHER THE SURFACE NOR THE SUBSURFACE OF THE MOON, NOR

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C O N F I D E N T I A L SECTION 02 OF 02 GENEVA 04263

ANY PART THEREOF OR NATURAL RESOURCES IN PLACE, SHALL BECOME PROPERTY OF ANY STATE, INTERNATIONAL INTER-GOVERNMENTAL OR NON-GOVERNMENTAL ORGANIZATION, NATIONAL ORGANIZATION OR NON-GOVERNMENT ENTITY OR OF ANY NATURAL PERSON. THE PLACEMENT OF PERSONNEL, SPACE VEHICLES, EQUIPMENT FACILITIES, STATIONS AND INSTALLATIONS ON OR BELOW THE SURFACE OF THE MOON, INCLUDING STRUCTURES CONNECTED WITH THEIR SURFACE OR SUBSURFACE, SHALL NOT CREATE A RIGHT OF OWNERSHIP OVER THE SURFACE OR THE SUBSURFACE OF THE MOON OR ANY AREAS THEREOF.

THE FOREGOING PROVISIONS ARE WITHOUT PREJUDICE TO THE INTERNATIONAL REGIME REFERRED TO IN PARAGRAPH 4 OF THIS ARTICLE.

4. STATES PARTIES HAVE AN EQUAL RIGHT TO THE EXPLORATION AND USE OF THE MOON WITHOUT DISCRIMINATION OF ANY KIND UNDER THE CONDITIONS STIPULATED IN THIS TREATY.

5. STATES PARTIES UNDERTAKE TO ESTABLISH AN INTERNATIONAL REGIME, INCLUDING APPROPRIATE PROCEDURES, TO GOVERN THE EXPLOITATION OF THE NATURAL RESOURCES OF THE MOON WHEN SUCH EXPLOITATION BECOMES FEASIBLE.

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6. IN ORDER TO FACILITATE THE ESTABLISHMENT OF THE INTERNATIONAL REGIME MENTIONED IN PARAGRAPH 5 OF THIS ARTICLE, STATES PARTIES SHALL INFORM THE SECRETARY-GENERAL AS WELL AS THE PUBLIC AND THE INTERNATIONAL SCIENTIFIC COMMUNITY TO THE GREATEST EXTENT FEASIBLE AND PRACTICABLE OF ANY NATURAL RESOURCES THEY MAY DISCOVER ON THE MOON.

7. THE MAIN PURPOSES OF THE INTERNATIONAL REGIME TO BE ESTABLISHED SHALL INCLUDE:

(A) THE ORDERLY AND SAFE DEVELOPMENT OF THE NATURAL RESOURCES OF THE MOON;

(B) THE RATIONAL MANAGEMENT OF THOSE RESOURCES;

(C) THE EXPANSION OF OPPORTUNITIES IN THE USE OF THOSE RESOURCES; AND

(D) AN EQUITABLE SHARING BY ALL STATES PARTIES IN THE BENEFITS DERIVED FROM THOSE RESOURCES, WHEREBY THE INTERESTS AND NEEDS OF THE DEVELOPING COUNTRIES AS WELL AS THE EFFORTS OF THOSE COUNTRIES WHICH HAVE CONTRIBUTED TO THE EXPLORATION OF THE MOON SHALL BE GIVEN SPECIAL CONSIDERATION.

8. ALL THE ACTIVITIES WITH RESPECT TO THE NATURAL RESOURCES OF THE MOON SHALL BE CARRIED OUT IN A MANNER COMPATIBLE WITH THE PURPOSES, AS SPECIFIED IN PARAGRAPH 6 OF THIS ARTICLE, OF THE INTERNATIONAL REGIME TO BE ESTABLISHED.

9. A CONFERENCE OF ALL STATES PARTIES SHALL BE CONVENED BY THE SECRETARY-GENERAL, AS DEPOSITORY, AT THE REQUEST OF ONE THIRD OF SUCH STATES IN ORDER TO IMPLEMENT THE PROVISIONS OF PARAGRAPH 4 OF THIS ARTICLE ON THE BASIS OF THE PRINCIPLE REFERRED TO IN PARAGRAPH 2 OF THIS ARTICLE, DUE REGARD BEING PAID TO THE PROVISIONS OF ARTICLE V, PARAGRAPH
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2, OF THIS TREATY. END QUOTE.

8. IN SECOND SENTENCE OF PARA 3 ABOVE, DELET PHRASE "IN RESPONSE TO". VANDEN HEUVEL

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